



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R09-OAR-2012-0249; FRL-9669-7]

**Designation of Areas for Air Quality Planning Purposes;
California; Western Mojave Desert Ozone Nonattainment Area;
Reclassification to Severe**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act (CAA or Act), EPA is granting a request from the State of California to reclassify the Western Mojave Desert ozone nonattainment area from "Moderate" to "Severe-15" for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). EPA is also reclassifying Indian country under the jurisdiction of the Twenty-Nine Palms Band of Mission Indians of California located within the boundaries of the Western Mojave Desert area in the same manner, following consultation with the Tribe, to maintain consistency with the classification of the surrounding areas under State jurisdiction.

EFFECTIVE DATE: This rule is effective on [Insert date 30 days from the date of publication in the Federal Register].

ADDRESSES: EPA has established docket number, **EPA-R09-OAR-2012-0249**, for this action. Generally, documents in the docket for

this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Doris Lo, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3959, lo.doris@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA.

I. Reclassification of Western Mojave Desert to Severe-15 Ozone Nonattainment

Effective June 15, 2004, EPA designated and classified the "Los Angeles and San Bernardino Counties (Western Mojave Desert)" area in California (Western Mojave Desert) under the CAA as "Subpart 2/Moderate" nonattainment for the 1997 8-hour

ozone NAAQS.¹ See 69 FR 23858, at 23884 (April 30, 2004) and 40 CFR 81.305. Our classification of the Western Mojave Desert area as a "Moderate" ozone nonattainment area established a requirement that the area attain the 1997 8-hour ozone NAAQS as expeditiously as practicable, but no later than six years from the date of designation as nonattainment, i.e., June 15, 2010.

On February 14, 2008, the California Air Resources Board (CARB) submitted a request that EPA reclassify three California areas (including the Western Mojave Desert area) designated nonattainment for the 1997 8-hour ozone standard.² For the Western Mojave Desert ozone nonattainment area, CARB requested reclassification from "Moderate" to "Severe-17."³ On March 14, 2012, CARB submitted a clarification requesting that EPA reclassify the Western Mojave Desert area from "Moderate" to

¹ This action applies only to the classification of this ozone nonattainment area for purposes of the 1997 8-hour ozone NAAQS. EPA intends to take separate actions to designate and classify areas of the nation that meet or do not meet the 2008 8-hour ozone NAAQS.

² See February 14, 2008 letter from James N. Goldstene, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, U.S. Environmental Protection Agency, Region 9. In addition to the Western Mojave Desert area, CARB requested that EPA reclassify the Ventura County and Sacramento Metro ozone nonattainment areas under CAA section 181(b)(3) to higher classifications for the 1997 8-hour ozone NAAQS. Pursuant to this request, EPA reclassified the Ventura County area from "Moderate" to "Serious" nonattainment effective June 19, 2008 (73 FR 29073, May 20, 2008), and reclassified the Sacramento Metro area from "Serious" to "Severe-15" nonattainment effective June 4, 2010 (75 FR 24409, May 5, 2010).

³ CARB subsequently submitted a SIP revision for this area to address the attainment demonstration and related requirements for severe-17 ozone nonattainment areas. See July 22, 2008 letter and enclosures from James N. Goldstene, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, U.S. Environmental Protection Agency, Region 9.

"Severe."⁴ Consistent with section 181(b)(3) of the CAA, we are granting the State's request and reclassifying the Western Mojave Desert area from "Moderate" to "Severe-15" nonattainment for the 1997 8-hour ozone NAAQS.⁵ We are not establishing a schedule for plan submissions at this time and intend to do so in a subsequent action, if necessary.

Because the State of California does not have jurisdiction over Indian country located within its borders, CARB's request to reclassify the Western Mojave Desert area does not apply to Indian country under the jurisdiction of the Twenty-Nine Palms Band of Mission Indians of California, which is located within the boundaries of the Western Mojave Desert nonattainment area. EPA implements federal Clean Air Act programs, including reclassifications, in this area of Indian country consistent with our discretionary authority under sections 301(a) and 301(d)(4) of the Clean Air Act. EPA has consulted with the Twenty-Nine Palms Band of Mission Indians of California regarding CARB's request and the Tribe has agreed to reclassification of its tribal land within the Western Mojave

⁴ See March 14, 2012 letter from James N. Goldstene, Executive Director, CARB, to Jared Blumenfeld, Regional Administrator, U.S. Environmental Protection Agency, Region 9.

⁵ Section 181(b) of the CAA does not authorize EPA to grant a request for reclassification of a "Moderate" ozone nonattainment area to "Severe-17." See, e.g., EPA's final rule reclassifying the San Joaquin Valley ozone nonattainment area, 66 FR 56476 at 56478 (November 8, 2001).

Desert nonattainment area consistent with the surrounding areas under State jurisdiction.⁶ Accordingly, we are reclassifying the entire Western Mojave Desert nonattainment area (both the portion under State jurisdiction and the portion under the Tribe's jurisdiction) from "Moderate" to "Severe-15" for the 1997 8-hour ozone NAAQS.

We are approving CARB's reclassification request under section 181(b)(3) of the Act, which provides for "voluntary reclassification" and states: "The Administrator shall grant the request of any State to reclassify a nonattainment area in that State in accordance with table 1 of subsection (a) of this section to a higher classification. The Administrator shall publish a notice in the Federal Register of any such request and of action by the Administrator granting the request." The provision for voluntary reclassification has been brought forward as part of the transition from the 1-hour ozone standard to the 1997 8-hour ozone standard. See 40 CFR 51.903(b) ("A State may request a higher classification for any reason in accordance with section 181(b)(3) of the CAA") and 40 CFR 51.903(a), Table 1. Because the plain language of section 181(b)(3) mandates that we approve such a request, EPA is

⁶ See e-mail dated April 11, 2012 from Marshall Cheung, Tribal EPA Director, Twenty-Nine Palms Band of Mission Indians of California, to Colleen McKaughan, Associate Director, EPA Region IX Air Division, Re: West Mojave Desert Reclassification or "Bump-up."

granting CARB's request for voluntary reclassification under section 181(b)(3) for the Western Mojave Desert ozone nonattainment area, and EPA is reclassifying the area from "Moderate" to "Severe-15" for the 1997 8-hour ozone NAAQS. With respect to that portion of the Western Mojave Desert area that is under the jurisdiction of the Twenty-Nine Palms Band of Mission Indians of California, EPA has consulted with the Tribe and the Tribe has agreed to reclassification of the area from "Moderate" to "Severe-15" consistent with the surrounding areas under State jurisdiction. As a result of this action, Western Mojave Desert must now attain the 1997 8-hour ozone NAAQS as expeditiously as practicable, but no later than fifteen years from the date of designation as nonattainment, i.e., June 15, 2019. EPA will address in future rulemaking actions, as necessary, any issues relating to timing and content of plan submissions under this new classification.

EPA has determined that today's action falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation where public notice and comment procedures are "impracticable, unnecessary or contrary to the public interest." With respect to that portion of the Western Mojave Desert area

that is under State jurisdiction, public notice and opportunity for comment prior to today's action are unnecessary because EPA's reclassification of the Western Mojave Desert area to "Severe-15" is mandated by the CAA and does not involve any exercise of discretion. Public notice and comment are also unnecessary with respect to our reclassification of Indian country under the jurisdiction of the Twenty-Nine Palms Band of Mission Indians of California located within the Western Mojave Desert area, because the Tribe has agreed to reclassification of these tribal lands consistent with the surrounding State lands.

II. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. With respect to lands under State jurisdiction, voluntary reclassifications under section 181(b)(3) of the CAA are based solely upon requests by the State and EPA is required under the CAA to grant them. These actions do not, in and of themselves, impose any new requirements on any sector of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classification, reclassification does not impose a

materially adverse impact under Executive Order 12866. With respect to Indian country, reclassifications do not establish deadlines for air quality plans or plan revisions. For these reasons, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

In addition, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This action does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), because EPA is required to grant requests by States for voluntary reclassifications and such reclassifications in and of themselves do not impose any federal intergovernmental mandate, and because tribes are not subject to implementation plan submittal deadlines that apply to states as a result of reclassifications.

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal

implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." One Indian tribe (the Twenty-Nine Palms Band of Mission Indians of California) has jurisdiction over Indian country located within the boundaries of the Western Mojave Desert area. EPA implements federal Clean Air Act programs, including reclassifications, in this area of Indian country consistent with our discretionary authority under sections 301(a) and 301(d)(4) of the Clean Air Act. EPA has concluded that this final rule might have tribal implications for the purposes of Executive Order 13175 but will not impose substantial direct costs upon the Tribe, nor does it preempt Tribal law. This final rule does not affect implementation of new source review for new or modified stationary sources proposed in Indian country within the boundaries of the Western Mojave Desert area because such sources are already subject to the permitting requirements that apply in "Severe" nonattainment areas for purposes of the 1-hour ozone NAAQS. This reclassification might affect projects proposed in this area of Indian country that require Federal permits, approvals, or

funding under EPA's General Conformity rule because of the lower de minimis thresholds triggered by reclassification (25 tons per year for volatile organic compounds or oxides of nitrogen). Given the potential implications, EPA contacted tribal officials to provide an opportunity for meaningful and timely input into this action. As discussed in section I of this document, on April 11, 2012, the Tribe agreed to the reclassification of its tribal lands within the Western Mojave Desert area consistent with the surrounding State lands.

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive

Order has the potential to influence the regulation.

Reclassification actions do not involve technical standards and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This reclassification action relates to ozone, a pollutant that is regional in nature, and is not the type of action that could result in the types of local impacts addressed in Executive Order 12898.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule

report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control,
Intergovernmental relations, National parks, Ozone, Wilderness
areas.

Dated: April 26, 2012

Jared Blumenfeld,
Regional Administrator,
Region IX.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81-- [AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart C - [AMENDED]

2. Section 81.305 is amended in the table for "California-Ozone (8-hour Standard)" by revising the entry for "Los Angeles and San Bernardino Counties (Western Mojave Desert), CA" to read as follows:

§81.305 California.

* * * * *

California - Ozone (8-Hour Standard)

Designated Area	Designation ^a		Category/classification	
	Date ¹	Type	Date ¹	Type
* * * * *				
Los Angeles and San Bernardino Counties (Western Mojave Desert), CA:	Nonattainment	[Insert date 30 days from the date of publication in the Federal Register]	Subpart 2/Severe-15.
Los Angeles County (part)	Nonattainment	[Insert date 30 days from the date of publication in the Federal	Subpart 2/Severe-15.
That portion of Los Angeles County which lies north and east of a line described as follows:				

<p>Beginning at the Los Angeles–San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; then north along the range line common to Range 8 West and Range 9 West; then west along the Township line common to Township 4 North and Township 3 North; then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18,</p>			Register]	
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<p>Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary.</p>				
<p>San Bernardino County (part)</p> <p>That portion of San Bernardino County which lies north and east of a line described as follows: Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary; And that portion of San Bernardino County which lies south and west of a line described as follows: latitude 35 degrees, 10 minutes north and longitude 115 degrees, 45 minutes west.</p>	<p>.....</p>	<p>Nonattainment</p>	<p>[Insert date 30 days from the date of publication in the Federal Register]</p>	<p>Subpart 2/Severe-15.</p>
<p>*</p>	<p>*</p>	<p>*</p>	<p>*</p>	<p>*</p>

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[FR Doc. 2012-11076 Filed 05/07/2012 at 8:45 am; Publication
Date: 05/08/2012]